

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

RACHEL SAUNDERS,)
)
Plaintiff,) Case No.: 18SL-AC02068
v.)
) Federal Cause No.:
PORTER HEALTH & FITNESS, LLC,)
et al.,)
)
Defendants.)

NOTICE OF REMOVAL

To: The Honorable Judges of the United States District Court for the Eastern District of Missouri

Clerk of the Circuit Court of St. Louis County, State of Missouri

Pontello & Bressler, LLC
Dominic Pontello
406 Boones Lick Rd.
St. Charles, MO 63301
Attorneys for Plaintiff

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant 9Round Franchising, LLC (“Defendant 9Round Franchising”), by and through its attorneys, Danna McKitrick, P.C., removes this action from the Associate Circuit Court of St. Louis County, State of Missouri, to the United States District Court for the Eastern District of Missouri. As grounds for this removal, Defendant 9Round Franchising states as follows:

1. On January 19, 2018, Plaintiff Rachel Saunders (“Plaintiff”) filed a Petition against Defendant 9Round Franchising and Defendant Porter Health & Fitness, LLC, d/b/a/ 9Round Wildwood (“Defendant Porter Health”) (collectively, “Defendants”) in the Associate Division of

St. Louis County Circuit Court, State of Missouri, captioned *Rachel Saunders v. Porter Health & Fitness, LLC, et al.*, Case No. 18SL-AC02068.

2. Plaintiff's Petition alleges claims against Defendant 9Round Franchising and Defendant Porter Health for violations of the Telephone Consumer Protection Act ("TCPA") ("Count I") and invasion of privacy ("Count II"), arising out of several alleged phone calls made to her cellular phone by Defendants, in attempt to collect a debt allegedly owed by Plaintiff.

3. On May 29, 2018, Defendant Porter Health was dismissed from this lawsuit, with prejudice. As such, Defendant 9Round Franchising is the only remaining Defendant.

4. The United States District Court for the Eastern District of Missouri has original jurisdiction over Count I of Plaintiff's Petition under the provisions of 28 U.S.C. § 1331, in that said count is a claim "arising under the Constitution, laws or treaties of the United States," and this Court accordingly has federal question jurisdiction over Count I.

5. Section 227(b)(3) of the TCPA, which provides that a private person could sue for violations of the TCPA in a state court, does not vest jurisdiction exclusively in state courts over private TCPA actions and does not divest federal district courts of federal question jurisdiction under 28 U.S.C. § 1331. *See Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 387, 132 S. Ct. 740, 753, 181 L. Ed. 2d 881 (2012).

6. The United States District Court for the Eastern District of Missouri may exercise supplemental jurisdiction over Count II of Plaintiff's Petition under the provisions of 28 U.S.C. § 1337, in that the United States District Court for the Eastern District of Missouri has original jurisdiction over Count I and both counts are so related that they form part of the same case or controversy, the alleged phone calls made to her cellular phone by Defendants. Additionally, there is no basis for this Court to decline to exercise supplemental jurisdiction over Count I as it does not

raise any novel or complex issues of state law, it does not substantially predominate over Count I, and there are no exceptional circumstances creating compelling reasons for declining jurisdiction. 28 U.S.C. § 1367(c). Thus, Counts I and II are both within this Court's jurisdiction, and § 1441(a) warrants removal of this action.

7. Defendant 9Round Franchising received copies of the initial pleadings setting forth Plaintiff's claims for relief when it was served on May 24, 2018.

8. Thirty (30) days have not yet expired since Defendant 9Round Franchising received copies of the initial pleadings setting forth Plaintiff's claims for relief.

9. The United States District Court for the Eastern District of Missouri, Eastern Division is the appropriate court for filing a Notice of Removal from the Associate Circuit Court of St. Louis County, State of Missouri, where the action was filed.

10. Pursuant to Local Rule 2.03, a Notice of Filing Notice of Removal acknowledged by the Clerk of the Circuit Court of St Louis County, State of Missouri, will be filed with the United States District Court for the Eastern District of Missouri within three days.

11. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 2.03, certified copies of all process, pleadings, orders and other documents served upon Defendant 9Round Franchising in this action on file in the Associate Circuit Court of St. Louis County, State of Missouri, as of this date are attached hereto and marked as **Exhibit A**.

12. Pursuant to 28 U.S.C. § 1446(d), Defendant 9Round Franchising has served a Notice on Plaintiff, stating that a Notice of Removal to the Clerk of the United States District Court for the Eastern District of Missouri was filed, as well as a copy of this Notice of Removal. A copy of said Notice to Plaintiff will be filed with this Court separately, as required by local rule.

13. A Civil Cover Sheet is attached hereto.

14. An Original Filing Form is attached hereto.
15. Defendant 9Round Franchising will file a Disclosure of Corporate Interests with this Court separately, as required by Local Rule 2.09.

WHEREFORE, having fulfilled all statutory requirements, Defendant 9Round Franchising, LLC, by and through undersigned counsel, removes this action from the Associate Circuit Court for St. Louis County, State of Missouri, to the United States District Court for the Eastern District of Missouri, and requests this Court to assume full jurisdiction over the matter as provided by law and permit this action to proceed before it as a matter properly removed thereto.

DANNA MCKITRICK, P.C.

BY: /s/ David R. Bohm
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ATTORNEYS FOR DEFENDANT
9ROUND FRANCHISING, LLC

CERTIFICATE OF SERVICE

The undersigned does hereby certify that, on this 25th day of June, 2018, a true and correct copies of the foregoing document was sent, via first-class mail, postage prepaid, to:

Pontello & Bressler, LLC
Dominic Pontello
406 Boones Lick Rd.
St. Charles, MO 63301
(Attorney for Plaintiff)

/s/ David R. Bohm